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**IN THE
COURT OF APPEALS OF INDIANA**

D.K.L.,)	
)	
Appellant-Petitioner,)	
)	
vs.)	No. 20A03-0610-JV-493
)	
STATE OF INDIANA,)	
)	
Appellee-Respondent.)	

APPEAL FROM THE ELKHART CIRCUIT COURT
The Honorable Terry C. Shewmaker, Judge
Cause No. 20C01-0608-JD-816

June 20, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

KIRSCH, Judge

D.K.L. appeals the juvenile court's order adjudicating him to be a delinquent. The sole issue for our review is whether there is sufficient evidence to support his adjudication.

We affirm.

FACTS AND PROCEDURAL HISTORY

The facts most favorable to the adjudication reveal that on July 22, 2006, J.P., D.L., A.S., and D.K.L., attended W.H.'s thirteenth birthday party, which included an overnight campout in three tents set up in W.H.'s backyard. During the night, W.H.'s brother, nine-year-old D.K.L., inserted his penis into twelve-year-old J.P.'s anus despite J.P.'s cries and resistance.

The State sought to have D.K.L. adjudicated as a delinquent for committing child molesting as a Class B felony if committed by an adult. Following a fact finding hearing, the juvenile court specifically found the testimony of victim J.P. to be credible. The court adjudicated D.K.L. to be a delinquent as alleged in the delinquency petition. D.K.L. appeals.

DISCUSSION AND DECISION

When the State seeks to have a juvenile adjudicated a delinquent, it must prove every element of the offense beyond a reasonable doubt. *D.B. v. State*, 842 N.E.2d 399, 401 (Ind. Ct. App. 2006). On review, we will not reweigh the evidence or judge the credibility of the witnesses. *Id.* Rather, we look to the evidence and the reasonable inferences therefrom that support the adjudication. *Id.* We will affirm if evidence of probative value exists from which the fact finder could find the juvenile guilty beyond a reasonable doubt. *Id.* at 401-02. In other words, we will affirm the finding of delinquency unless it may be concluded that no reasonable fact finder could find the elements of the crime proven beyond a reasonable

doubt. *Id.* at 402.

In this case, the delinquency petition alleges as follows:

[O]n or about July 22, 2006 . . . one [D.K.L.] did . . . cause a male minor child under fourteen (14) years of age, to-wit: one [A.S.], 12 years of age, to perform or submit to sexual intercourse or deviate sexual conduct, to wit: anal sexual intercourse; all of which is contrary to the form of I.C. § 35-42-4-3

Deviate sexual conduct is an act involving the sex organ of one person and the mouth or anus of another person. I.C. § 35-41-1-9.

Here, D.K.L. committed deviate sexual conduct when he placed his penis into J.P.'s anus. Nevertheless, D.K.L. complains that the petition alleges that he committed anal sexual intercourse. Indiana Code Section 35-41-1-26 defines intercourse as an act that includes any penetration of the female sex organ by the male sex organ. According to D.K.L., because he and J.P. are both males, anal sexual intercourse could not have occurred. However, under the facts and circumstances of this case, the word sexual placed between the words anal and intercourse is mere surplusage, which did not prejudice D.K.L. We find no error.

Affirmed.

DARDEN, J., and MATHIAS, J., concur.